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**IN THE  
COURT OF APPEALS OF INDIANA**

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AVIER M. NANCE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0612-CR-1087
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable William Young, Judge  
Cause No. 49G20-0510-FA-172011

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**October 18, 2007**

**MEMORANDUM OPINION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Avier M. Nance appeals his convictions for Dealing in Cocaine,<sup>1</sup> a class A felony, Possession of Cocaine and a Firearm,<sup>2</sup> a class C felony, and Possession of Marijuana,<sup>3</sup> a class D felony. Nance argues that the trial court erroneously admitted evidence seized pursuant to a search warrant executed following a controlled drug buy. Finding no error, we affirm the judgment of the trial court.

### FACTS

At some point before October 4, 2005, a confidential informant approached Indianapolis Police Detective Clifton Jones. The informant told Detective Jones that a “B/M [Black Male] identified as Avier Nance, was selling large quantities of cocaine from the residence located at 3722 N. Central Ave.” State’s Ex. 1. Detective Jones searched the informant and found no illegal contraband, drugs, or money. The detective then provided the informant with money and followed the informant to 3722 North Central Avenue, where he observed the informant enter the residence. Detective Jones and other Dangerous Drug Detectives maintained constant surveillance on the residence and confirmed that no people entered or exited the home while the informant was inside. The informant eventually exited the residence, met with Detective Jones at a predetermined location, and told the detective that Nance had sold him cocaine and had other cocaine in his possession. Detective Jones later discovered several police reports noting that Nance had lived at the address in question in the past.

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<sup>1</sup> Ind. Code § 35-48-4-1.

<sup>2</sup> I.C. § 35-48-4-6.

On October 4, 2005, Detective Jones submitted an affidavit describing the controlled drug buy. Pursuant to the affidavit, the trial court found probable cause and issued a warrant to search Nance's residence. Upon executing the warrant, the police seized 637 grams of cocaine, 128 grams of marijuana, cash, guns, and a digital scale.

On October 10, 2005, the State charged Nance with thirteen offenses.<sup>4</sup> On November 22, 2005, Nance filed a motion to suppress the evidence seized by the police pursuant to the search warrant, and the trial court denied the motion on February 24, 2006. On September 5, 2006, following the State's dismissal of a number of charges and a bench trial, the trial court found Nance guilty of class A felony dealing in cocaine, class C felony possession of cocaine,<sup>5</sup> class C felony possession of cocaine and a firearm, and class D felony possession of marijuana. Following a September 14, 2006, sentencing hearing, the trial court sentenced Nance to forty years imprisonment with twenty suspended for dealing in cocaine, eight years with four suspended for possession of cocaine and a firearm, and one year for possession of marijuana, with all sentences to be served concurrently, for a total executed sentence of twenty years incarceration. Nance now appeals.

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<sup>3</sup> I.C. § 35-48-4-11.

<sup>4</sup> The charges stemmed from the items seized from the residence, not from the controlled buy.

<sup>5</sup> The trial court ultimately found that the possession count merged into the dealing count and did not enter a judgment of conviction on that offense.

## DISCUSSION AND DECISION

Nance argues that there was no probable cause to issue the search warrant and, consequently, that the trial court erroneously admitted evidence that was seized pursuant to that warrant. A trial court has broad discretion when ruling on the admissibility of evidence and we will not disturb the trial court's decision absent an abuse of that discretion. Goodner v. State, 685 N.E.2d 1058, 1060 (Ind. 1997). In evaluating the ruling, we will not reweigh the evidence and will consider conflicting evidence in favor of the trial court's ruling together with uncontested evidence that is favorable to the defendant. Collins v. State, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), trans. denied.

The Fourth Amendment to the United States Constitution and Article I, section 11 of the Indiana Constitution protect against unreasonable searches and seizures.<sup>6</sup> In evaluating the issuance of a search warrant on appeal, we must determine whether the trial court had a substantial basis for concluding that probable cause existed. Methene v. State, 720 N.E.2d 384, 387 (Ind. Ct. App. 1999). Substantial basis requires that the reviewing court focus on whether reasonable inferences drawn from the totality of the evidence support the determination that probable cause existed. Id. In conducting this analysis, we may consider only the evidence actually presented to the issuing court and not post hoc justifications for the search. Id.

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<sup>6</sup> It is not apparent whether Nance is relying on the Indiana or United States Constitutions in arguing that the evidence was erroneously admitted.

Here, the basis for the search warrant was the information contained in Detective Jones's affidavit, which stemmed from the controlled buy.<sup>7</sup> In Methene, we explained the process of a controlled buy:

“A controlled buy consists of searching the person who is to act as the buyer, removing all personal effects, giving him money with which to make the purchase, and then sending him into the residence in question. Upon his return he is again searched for contraband. Except for what actually transpires within the residence, the entire transaction takes place under the direct observation of the police. They ascertain that the buyer goes directly to the residence and returns directly, and they closely watch all entrances to the residence throughout the transaction.”

720 N.E.2d at 389-90 (quoting Flaherty v. State, 443 N.E.2d 340, 341 (Ind. Ct. App. 1982)) (emphasis omitted).

Nance argues that the controls in this case were insufficient to establish a valid controlled buy. Specifically, Nance contends that there was no probable cause to link him to the residence in question, inasmuch as the only link specified in the affidavit was based on old police reports establishing that he had lived there years before the controlled buy. He directs our attention to two cases in which this court concluded that the police officer's affidavit was insufficient to establish a nexus between the defendant and the location of the drug buy. Walker v. State, 829 N.E.2d 591, 595-96 (Ind. Ct. App. 2005), trans. denied; Merritt v. State, 803 N.E.2d 257, 260-61 (Ind. Ct. App. 2004). These cases are inapposite, however, inasmuch as the affidavits therein did not specifically identify the respective defendants as having taken part in the controlled buys. Here, on the other hand, the affidavit

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<sup>7</sup> Although Nance argues that the information provided by the confidential informant was unreliable hearsay, it is well settled that the hearsay requirement is not implicated when a warrant is based on a controlled drug

specifically identified Nance as the person selling cocaine out of the residence in question and further stated that he had more cocaine in his possession. Thus, the affidavit established a sufficient nexus between Nance and the residence and contained reasonable indicia that cocaine would be present when the warrant was executed.

Prior to the controlled buy, Detective Jones searched the informant and his vehicle, provided the informant with money, and sent him to the residence in question. The residence was under constant and complete surveillance while the informant was inside. Upon exiting, the informant gave the detective the cocaine he had purchased from Nance and identified Nance as the person who had sold it to him, also stating that Nance had other cocaine in his possession. The detectives again searched the informant and his vehicle, finding no contraband. This information, which was contained in the affidavit, is a substantial basis on which the trial court could have concluded that probable cause existed. Thus, we conclude that the trial court did not abuse its discretion in admitting evidence seized pursuant to the search warrant.

The judgment of the trial court is affirmed.

SHARPNACK, J., and RILEY, J., concur.

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buy. Methene, 720 N.E.2d at 389. Thus, this argument fails.